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OGC HAS REVIEWED.

13 March 1952

MEMORANDUM FOR: Deputy Director (Administration)
FROM : General Counsel
SUBJECT : Exemption from the Performance Rating Act of 1950

1. PROBLEM

To obtain the concurrence of the Civil Service Commission in exemption of CIA from the Performance Rating Act.

2. ASSUMPTIONS

If the application of any legislation tends to impair the security of CIA, that, in itself, is sufficient basis to approach the Congress for relief, by exemption, from the statutory provisions involved.

3. FACTS BEARING ON THE PROBLEM

Prior to enactment, CIA requested an exemption from the Performance Rating Act of 1950 on the same basis as had been given for exemption from the Classification Act of 1949, but was informed by the committee of Congress concerned that there was no need for an exemption from the Performance Rating Act. The Bill was passed without such an exemption. In 1951 an approach was made to the Civil Service Commission to work out a suitable arrangement within the terms of the Act but results were inconclusive. Consequently, a complete re-study of the problem has been made, leading to the conclusion that it would be impossible for the Civil Service Commission to fulfill its responsibilities under the Act and at the same time comply with CIA security requirements.

4. DISCUSSION

The Act requires, in pertinent part, that all performance rating programs be approved by the Civil Service Commission, that employees may appeal to a Board of Review, that they may designate their own representatives to appear before the Board, that the Chairman of the Board will be designated by the Civil Service Commission, and that the Civil Service Commission shall inspect the administration of the rating systems in use, and if it does not approve, may require use of its own plan. The practical impact of these provisions falls on personnel actions, such as in-grade increases, which may be effected only on the basis of the ratings called for in the Act. The security aspects are created primarily by the right of the employee to have his own representative on appeal, the requirement that the head of the Board of Review be a chairman designated by the Civil Service Commission, and the requirement that the Civil Service Commission inspect the plan and its administration.

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The first two points could probably be worked out with the Commission if it were willing to adjust the requirements of the Act to our needs. Thus, we might administratively require that an employee's representative be a staff member of the Agency with full security clearance. Technically, however, this would impair the employee's right of free representation. Secondly, the Civil Service Commission might be willing to pick a chairman for the Board of Review from an appropriate position within CIA. This appears permissible under the Act although it seems the intent was to have the Chairman represent the Commission. However, the inspection requirement appears to be an insoluble problem under the terms of the Act. The CIA rating plan contemplates use of forms which are, even in their original printed state, highly classified, because they specify comment as to performance of duties which are, by their nature, highly sensitive. It would be inconsistent with Agency security plans to permit free review by the Commission of a plan which included these forms and the information they contain even when not filled out. Outside review of the completed forms cannot be considered; they are necessarily most closely held within the Agency.

Since the Civil Service Commission is made specifically responsible by the Act for inspection of the administration of rating systems, it cannot abdicate this responsibility by administrative agreement. Yet any inspection worthy of the name would necessarily involve the Commission's representatives in information which is normally never released outside the Agency and some of which is closely held within the Agency. This is precisely the situation which existed when CIA technically was subject to the Classification Act. Yet the Civil Service Commission agreed to yield its right to review classifications on the ground that it could not do so without full information of job descriptions, which information they, themselves, agreed should not be given to Commission representatives. This position of the Commission was confirmed by later exemption of CIA from the Classification Act of 1949. The logical conclusion is that CIA should have the support of the Commission in seeking an exemption from the Performance Rating Act and that such support is necessary and proper before approaching the Bureau of the Budget and Congress.

5. RECOMMENDATIONS

That the position of CIA, as set forth above, be presented to the Civil Service Commissioners and their support elicited for an approach to the Bureau of the Budget and Congress through appropriate committees to seek a specific exemption from the Performance Rating Act of 1949.

LAWRENCE R. HOUSTON

OGC/LRH:jps:mls
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